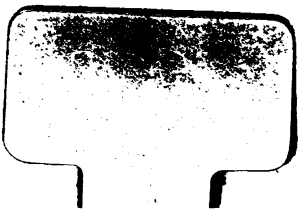

A SPEECH

DELIVERED IN

THE HOUSE OF COMMONS,

ON THURSDAY, MAY 3, 1849,

ON THE MOTION FOR THE

SECOND READING OF MR. STUART WORTLEY'S BILL

FOR ALTERING

The Law of Marriage.

BY

ROUNDELL PALMER, Q.C., M.A.

LATE FELLOW OF MAGDALEN COLLEGE, OXFORD, M.P. FOR PLYMOUTH.

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At the suggestion of several members of the House of Commons, who heard the following speech delivered, I have revised and corrected it for publication in the form it which it now appears; and I have added a few supplementary notes, on points which were either overlooked in speaking, or less fully treated than their importance to the argument would seem to deserve.

R. P.

A

SPEECH,

&c. &c.

SIR,

I FEEL that it is at once an advantage and a disadvantage to follow the honourable and learned member for Southampton* in this debate,—an advantage to have the argument against me so clearly stated, and a disadvantage to be placed in contrast with a display of eloquence and ability which has excited my admiration, as it must have done that of the House. There are some points on which I have the satisfaction of agreeing with the honourable and learned member. I agree that we cannot look with indifference upon the fact (if it be the fact) that a law of this nature is extensively violated in the country; and if there were no principle to which the law could be referred, and for the sake of which it ought to be maintained, I should not feel able to defend it, even against so imperfect and one-sided a case as is made by this report.† Beyond all question, if there were 1500 of the Queen's subjects deprived of the power of marrying according to their

* Mr. Cockburn. † The Report of the Royal Commission.

inclinations by a purely arbitrary Act of the Legislature, I should be one of the first to say that Act ought to be repealed. More than this, I concur fully in the view taken by my honourable friend the member for Herefordshire,* who has said, that he could not take a strong course in opposition to this Bill, for reasons merely of convenience and expediency, if the law were really not well founded upon the law of God. It is because I am convinced that the law, as it stands, and always has stood in this country, is not arbitrary, and does not rest solely on reasons of convenience and expediency, but is established on the highest source of moral obligation, the will of God revealed to man; it is, therefore, that I am decidedly opposed to the present Bill. And while I take my stand upon this ground (a ground hitherto common to every speaker on this side of the question), it is fully open to me to insist upon the inestimable privileges and advantages resulting to society from that law, and of which we should all be deprived, contrary (as we believe) to the Divine appointment, if that law were repealed.

The honourable and learned gentleman, the member for Southampton, has thrown out a challenge to those who oppose this Bill to go to the Word of God, to cite texts from Scripture, in order to prove that marriage with a wife's sister is really prohibited by the Divine Law. I cannot feel surprised that those who preceded me should have shrunk from this line of argument,—not on account of any inability on their part to enter into it, or from any doubt of the soundness of their position, but on account of the great difficulty of arguing upon such a subject with propriety in this assembly. For my own part, I enter into it most unwillingly; but I do not think

* Mr. Haggitt.

myself at liberty to decline the challenge of the honourable gentleman. The law which we defend is altogether founded upon the assumption (expressed both in the canon of 1603 and in the statutes of King Henry VIII.*) that it correctly represents the prohibitions of the Divine Law, as laid down in the book of Leviticus. The honourable gentleman, therefore, has a right, if he pleases, to call for an explanation of the grounds on which it is held that this prohibition is contained in the book of Leviticus. And this is another reason why the advocates of this law cannot safely take their stand upon merely social considerations; because, unquestionably, those who made the law have placed its foundations upon other and higher ground. What they meant to do certainly was, to discard all merely human prohibitions, and to reduce the table of prohibited marriages within the exact limits which they found in the Divine law. Feeling, therefore, the delicacy and difficulty of the subject, and my own inadequacy to the task, I must, for a short time, ask the attention of the House while I endeavour to place before them the real state of the argument from Scripture.

Now first, to introduce this argument, let us look at the table of prohibited degrees. That table contains *thirty* degrees in all, within which marriage is

* The language of the Canon is, "*The degrees prohibited by the laws of God*, and expressed in a Table set forth by authority," &c. The Acts, 25 Hen. VIII. cap. 22, and 28 Hen. VIII. cap. 7, profess to enumerate "*the degrees of marriage prohibited by God's laws*;" specifying, among others, *the wife's sister*: and the latter Act says, "Which marriages, *albeit they be plainly prohibited and detested by the laws of God*, yet nevertheless may sometime have proceeded," &c. The Act 32 Hen. VIII. cap. 38, which is unquestionably now in force, provides that all marriages shall be lawful "*that be not prohibited by God's law*," "and that *no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees.*"

prohibited; with only *two* of which the right honourable member for Bute* now proposes to interfere. Of those thirty degrees, *only fourteen are prohibited in express terms in the Book of Leviticus;* the intermarriages of father and daughter, uncle and niece, and others more remote, both in consanguinity and in affinity, are among those not in terms forbidden; and there are, therefore, *not less than sixteen degrees, a majority of the whole table, including several of near consanguinity,* which must be abandoned, if those who support the prohibitions are not permitted to argue from something more than the naked, dry letter of Scripture,— if they are not allowed to collect one prohibition from another, to construct a consistent system upon the principles indicated by the instances given in Scripture, and to look to the general tenor and effect of the whole passage of Scripture in which the prohibitions are found. I would ask the House to approach this argument, not in the spirit of sophistry,

"I cannot find it; 'tis not in the bond;"

but in the spirit of those who wish *bonâ fide* to look to the law of God, fairly to collect its meaning, and to submit themselves to it fully and implicitly. Before referring to any authorities, I will deal with the text; and the House will judge whether the argument, on these principles, is not at least sufficiently probable to make them pause before they depart from a rule of interpretation, which has been recognised in the legislation of all Christendom down to the present time.

The first point to be considered is, whether the Levitical prohibitions are applicable as a rule for Christians or only for the Jews. The right honourable gentleman does not (as I understand) dispute that they are generally binding upon Christians as

* Mr. Stuart Wortley.

part of the moral law; his Bill, certainly, does not propose so extensive an alteration of the law as would follow from a denial of this principle, though it is denied by some of his witnesses, and by some of his advocates in this House. As the prohibitions themselves stand in the Book of Leviticus, this point would seem to be free from doubt, because they are introduced by a preamble referring to the practices of heathen nations, which the Jews were not to follow; and the instances of prohibited marriage, together with a few other practices of a different kind, having been enumerated, all these things are spoken of as abominations and defilements, and causes of penal judgments, not in the Jews, but in the Gentile nations who were not subject to the peculiar Jewish law. Assuming, then, that the prohibitions are moral, and of general application, what are they? They begin with a general principle thus laid down:—"None of you shall approach to any that is near of kin to him:" and the question is, where that principle is to be limited? A number of cases are enumerated, some of consanguinity, some of affinity, shewing that affinity is here clearly included in the notion of kindred; and among the enumerated cases there is an express general prohibition of marriage with a brother's wife. The enumerated cases do not exhaust more than half the instances which the common reason of mankind perceives to fall within the same principle; the common reason of mankind requires the application under such circumstances of these principles, that the more remote includes the nearer, that equal implies equal, and that the rule laid down as to a man shall govern the converse case of a woman, where the degree of propinquity is exactly the same, and nothing but the sex is different. On these principles of interpretation our table of prohibited degrees is founded; and marriage with a wife's sister is held to be prohibited,

because it is the exact converse of the marriage, expressly prohibited, with a husband's brother. But the argument from the text of Scripture does not stop here. In the 17th verse of the chapter, a man is expressly forbidden to marry "a woman and her daughter," or to take "her son's daughter or her daughter's daughter;" because "*they are her near kinswomen; it is wickedness.*" It is wickedness, therefore, to marry the *near kinswoman* of a wife; and, for that reason only, marriages with a wife's mother, daughter, or grandaughter, (none of which marriages the right honourable gentleman proposes to legalise,) are forbidden. But is not a wife's sister her near kinswoman? Does not the common sense of mankind answer that question? Or, if it must be strictly proved that a sister is a near kinswoman in the sense of this passage, look at the 12th and 13th verses, where marriage with a father's sister, or a mother's sister, is prohibited, "*because she is thy father's*" (or "thy mother's") "*near kinswoman.*" If the father's sister is the father's near kinswoman, the wife's sister is the near kinswoman of the wife; and if it be "wickedness" to marry the wife's near kinswoman (as the 17th verse expressly says it is), how can it be otherwise than wickedness to marry the wife's sister?

If the passage had ended here, I cannot think any logical reasoner, or any serious Christian, could have entertained a moment's doubt that the prohibitions of this chapter extend to the case of a deceased's wife's sister. But it is said that the next verse (the 18th) is in these terms:—"Neither shalt thou take a wife to her sister, to vex her, beside the other, in her lifetime;" and the argument is, that in this verse the prohibition of marriage with a wife's sister is limited to the wife's lifetime, and that permission to marry a wife's sister after her death is, therefore, implied. I pause for a moment to notice the very unfair way in

which it has been continually represented, that the argument *for* the prohibition rests upon this verse. The fact is precisely the contrary:—it is upon this verse, and upon this translation of it, and upon this inference from the verse so translated, that the argument *against* the prohibition entirely and exclusively rests. Take this verse away, and, as I have already shewn, this prohibition must of necessity be inferred from the unambiguous language of the previous verses. Before, therefore, we suffer that conclusion to be shaken by any inference from this 18th verse, as it stands translated in the text of our English Bibles, it is not immaterial to inquire whether that translation is certainly correct and free from doubt. When the argument from that verse was lately insisted upon before the Court of Queen's Bench, by parties who then sought to persuade that Court that marriage with a wife's sister was not prohibited by the existing law, Lord Chief Justice Denman made these pertinent observations:—"If I am to be the judge to pass a judgment upon the meaning of the Scriptures, am I bound by any particular translation of them? That is one of the stumbling-blocks at the very threshold of such an inquiry, and we have witnessed the effect of it upon the present occasion. Six different interpretations have been put upon the text of Scripture, as it presents itself to us in the Old Testament."

Six different interpretations had been put upon that 18th verse in the discussion before the court of law. I do not, however, propose to detain the House by referring to more than one of them; and I refer to that because it is an interpretation resting, not on any private or conjectural criticism, but on the authority of the translators of the English Bible themselves. Those translators have themselves told us in the margin that there is room for doubting the accuracy of the version which they have adopted in the text; they have warned

us not to rely upon inferences drawn merely from that translation, by telling us in the margin that the verse may with equal propriety be rendered, "*Thou shalt not take one wife to another*, to vex her, in her lifetime." Adopt that reading, and the verse ceases to bear upon the question now before the House; it refers to the subject of polygamy, and not of incest; and is a prohibition of polygamy under circumstances which tend to the vexation or infraction of the rights of the first wife. That this is the real meaning of the verse was the opinion of Schleusner and of other very considerable Hebrew scholars; and the verse so rendered would correspond in sense with another precept which we find in the book of Exodus,* concerning a maid-servant married by her master or her master's son: "If he take him another wife, her food, her raiment, and her duty of marriage, shall he not diminish." The form of expression with which the verse is introduced, and the great preponderance of arguments from probability, appear also to favour this sense; for the reading even in the received text is not, "Thou shalt not take *her sister to thy wife*," but, "Thou shalt not *take a wife* to her sister;" and if polygamy were allowed in all other cases, and marriage with a wife's sister were allowed after her death, it would be difficult to conceive any consistent and satisfactory reason why, among these moral precepts of universal obligation, a marriage with two sisters at once, like that of the patriarch Jacob, should be specially forbidden. Without, therefore, troubling the House with any philological disquisition, I think I have at least stated sufficient ground for the conclusion that a prohibition, clearly and certainly collected from the first seventeen verses of this chapter, cannot safely or reasonably be set aside in favour of an inference drawn from the

* Chap. xxi. v. 10.

letter of the 18th verse as it stands translated in the text of the English Bible, but which inference cannot be drawn either from the letter or the spirit of the same verse as it is translated in the margin—an inference which the translators themselves did not draw, because they unquestionably held the Levitical prohibitions to be correctly expounded by the table of prohibited degrees.

There is one argument more used by the honourable and learned member for Southampton, and by many others, on this part of the subject, which I must touch slightly, and then I have done. It has been said that there is in the book of Deuteronomy a special injunction that, under certain circumstances, a man should marry his brother's widow; and it is argued that, reasoning from this case to the converse, it must be equally lawful for a man to marry his wife's sister. This argument concedes that we may properly reason from the case of the brother's widow to the converse; and the honourable and learned member for Southampton does not appear to perceive that, by doing so, he concedes the whole question. For in the 16th verse of the 18th chapter of Leviticus there is a direct general prohibition of marriage with a brother's wife; and in the 20th chapter such a marriage is said to be "an unclean thing;" and accordingly the right honourable gentleman, the member for Bute, does not propose to legalise that marriage or disturb that prohibition; and yet the honourable member for Southampton asks the House to conclude that it is not incest to marry a wife's sister because marriage with a brother's widow, *which you now regard, and (if this Bill passes) will still regard, as incestuous*, was, under certain particular circumstances, enjoined to the Jews; not permitted by way of relaxation, but enjoined by a very special commandment, forming part of their peculiar law of inheritance. We cannot enter into the

reasons why certain things which appear to us contrary to the general principles of morality were permitted under the Jewish dispensation, or were enjoined upon the Jews under particular circumstances. We cannot judge why the world was originally so created that in the necessity of things brothers and sisters must have married in the earliest generations; but we entertain no doubt that the Divine Author of the world had in view the interests of His creatures and the social necessities of mankind in different ages; and what we ought now to do is to look at the morality laid down as applicable to our own case, and by that abide. The general rule among us, that a woman may not marry her husband's brother, is plainly established; and, unless the argument from the converse is to be excluded, it follows, as a necessary consequence, that a man may not marry the sister of his wife.

I have now done with this difficult and delicate part of the subject, on which it has been painful to me to speak at all, and on which I am grateful for having been heard with so much patience. I now come to consider the assistance which we receive, with respect to the Scriptural argument, from the judgment and authority of the Christian Church down to the present time. The Jewish authority, which has been called in to settle the question, I set aside; if I were a Jew it might weigh with me; or if Christians were taught in the New Testament to look with respect to the Jews as interpreters of their own law. But when I find that in the New Testament the Jewish glosses and traditions are always spoken of in language of reprobation and warning,—when I find it stated that the Scribes and Pharisees made the word of God of none effect through their traditions,—I cannot for a moment admit the authority of their interpretations in a case where I find them opposed to the general judgment of the Christian Church.

Now there is, no doubt, some difficulty in investigating the opinions held in very ancient times by the Christian Church upon almost all subjects, on account both of the paucity of the records and literature of those times, and of the necessity that questions should be raised, in order to give occasion for authoritative judgments concerning them. There is a further difficulty introduced into the present question from the circumstance that the Church, from an early period, added of its own authority many prohibitions, not now recognised in this country, to those contained in the Levitical law; which, of course, creates a difficulty in shewing how, in those very ancient times, the line which we desire to draw would have been drawn. But some things are certain: and first, it is certain that no recorded instance can be produced of any marriage with a wife's sister permitted in the Christian Church before the end of the fifteenth century. It is also certain that such marriages were, down to that period, never mentioned, except to be reprobated, and were repeatedly, and in every part of Christendom, condemned and prohibited by canons, councils, and individual fathers of the Church. In the fourth century St. Basil was consulted on the subject, and expressed himself horror-struck at hearing such a question raised. He did not hesitate to lay it down that this case was within the true sense of the Levitical prohibitions; and he referred to the uniform tradition of the Church as opposed to such a connexion. At a later period, and almost till the time of the Reformation, a distinction was made and recognised by popes, by canonists, and by leading divines among the schoolmen, between the Levitical prohibitions and those other prohibitions superadded to them by ecclesiastical authority; within the latter only it was held that the Pope had a dispensing power, and as to these the practice of dispensation did in fact prevail;

but the Levitical prohibitions were held to be *indispensable;* it was not the practice of the Popes to dispense with them, and it was then considered to be beyond the power of any Pope to do so. In the evidence of Dr. Pusey, at pages 43–51 of the book before the House, references will be found to the works of Aquinas, and many other very learned men, who always insisted on this distinction; and those who did so agreed in referring the particular case of marriage with a wife's sister to the class of marriages prohibited by the Divine law,* and not to the class of prohibitions by ecclesiastical authority. All Christian authority, therefore, down to the first dispensation given in this degree, was in favour of the doctrine, that marriage with a wife's sister was prohibited by the Levitical law. And by whom was that first dispensation given? By Pope Alexander VI., the infamous Borgia, who, if history has not done him most grievous wrong, was stained in his own person with incest of the deepest dye, and almost every other crime. He was the first man to permit a marriage of this description in the Christian Church; and only one other dispensation in the like degree was granted before the Reformation, and that not in the case of a wife's sister, but in the case of a brother's wife. This was the celebrated dispensation granted to King

* Dr. Wiseman himself, though not holding the Levitical degrees, as such, to be binding on the Church of Rome, or indispensable, appears clearly to think the case of a wife's sister included in the Levitical prohibitions. When asked by the Commissioners, whether he thinks marriages between a man and the sister or niece of his deceased wife "in any way prohibited by, or contrary to, Holy Writ?" and "what passage there is in Holy Writ which in any way prohibits such marriages?" He says,—"*Such marriages are disapproved of in the Mosaic law;*" and, "The 18th chapter of Leviticus is the one in which the prohibited degrees are enumerated, *and that of the widow of a deceased brother seems to be mentioned.*"—*Evidence*, QQ. 1156, 1157, p. 104.

Henry VIII. by Pope Julius II.,—a pontiff not indeed so stained with profligacy as Alexander VI., but far more celebrated for his military and political genius than for any qualifications as a divine. And so the question stood, until the validity of this very dispensation was brought under the judgment of Christendom in the case of King Henry the Eighth's divorce; and then the Reformation followed.

Now, how did the Reformation pronounce upon this question? I shall be able to shew that, by the unanimous voice of the Reformation, at home and abroad, the marriages which the right honourable gentleman proposes to legalise were pronounced to be within the Levitical prohibitions; and, for that reason, incestuous and unlawful. But, first, I must be allowed to express my surprise at the attack which we have heard this night from the honourable and learned member for Southampton upon the characters and motives of those illustrious Reformers who were most instrumental in defining the civil and ecclesiastical law of England on this subject. It has been said by the honourable and learned member, that when Cranmer, and Ridley, and Hooper, and Latimer, laid down the doctrine, that marriage with a wife's sister was plainly prohibited and detested by the law of God, they did so merely for reasons of political expediency and courtly subservience; because King Henry VIII., to gratify his passions, had repudiated his marriage with his brother's widow; and that, when Archbishop Parker and the Convocation of 1603 affirmed the degrees expressed in Parker's Table to be prohibited by the law of God, they did so merely because Queen Elizabeth's legitimacy, and her title to the throne, depended on the invalidity of her father's marriage with Queen Katharine. In other words, that men, whose names I did not expect to have heard mentioned in any numerous assembly of

Englishmen without veneration, that Cranmer, Ridley, Latimer, and Hooper, who died at the stake rather than renounce their religious belief under Queen Mary;—that Parker, whom those most attached to the principles of the Reformation in the Church of England now delight to honour, distinguishing by his name the society which they have formed for the revival of the literature of that period;—that the translators of the Bible, who were parties to the Convocation of 1603, and Jewell, the great Apologist of the Reformed Church of England before the world, did, on repeated occasions, when dealing with this momentous question, when professing to expound the law of God on the subject of marriage in the name of the Church of England, so as to guide and bind her members for all future time, basely dissemble with God and man, and teach, from motives of secular policy, a doctrine which they did not, in their consciences, believe to be true. Sir, I am satisfied that the House would never be moved by such imputations upon such men, even if it were not easy, as it is, to prove their futility. But the House has heard this evening a letter of Archbishop Cranmer read by the right honourable gentleman the member for the University of Cambridge,* from which it appears that, when Henry VIII. used all his influence with Cranmer to sanction the marriage of one of his favourites with a deceased wife's sister, the archbishop refused the king's request, expressly on the ground that such a marriage was contrary to the law of God. And as for the king's own marriage with Queen Katharine, the honourable and learned gentleman has spoken as if that were a marriage so clearly lawful, that nothing but an unworthy compliance with the king's passions could have induced the Reformers to question it;

* Mr. Goulburn.

when, in point of fact, it was a marriage with a brother's widow,—a marriage until then unknown in Christendom, which according to the prevailing doctrine of the best canonists and schoolmen, down to that time, not even the Pope's dispensation could legalise,—a marriage which the right honourable member for Bute does not now propose to legalise in this country, which the author of this Bill admits to be incestuous and prohibited by the Divine law. So it comes to this,—that the whole authority of the Church of England as to marriage with a wife's sister is to be set at nought, the characters of the Reformers are to be vilified, and their names branded with reproach, because you say they had political reasons for prohibiting marriage with a husband's brother, while you yourselves acknowledge the correctness of their decision on that very point, and confess your obligation to prohibit that very marriage, not on political but on religious grounds.

Sir, I shall not weary the House by going again over the proofs so abundantly given by the right honourable gentleman the member for the University of Cambridge, that the voice of the Reformation in England was clear and express upon this question. The object of the Reformation in this particular was to bring back the law of prohibited degrees to the exact standard of the Book of Leviticus; to retrench and sweep away all the other prohibitions introduced by ecclesiastical authority, and to adhere to those which were expressed, or contained, by necessary inference, in the Word of God. The Table of prohibited degrees, which the right honourable mover of this Bill now proposes to alter, expresses the deliberate and often-repeated judgment of the Church of England as to the proper structure of a marriage-code reformed upon this principle, and, therefore, as to the true interpretation of the Levitical law.

But what were the opinions of other Reformers, and other Reformed Churches, remote from the influence of such motives as those imputed to Cranmer? First, let us look to Scotland, to the Presbyterian Church of Scotland, whose Confession of Faith was framed under circumstances which could not possibly be affected by the question either of Henry the Eighth's marriage or of Queen Elizabeth's legitimacy. I will take the doctrine of their Confession of Faith on this subject from the highest authority, from a petition of the ministers and elders of the Established Church of Scotland, met in the Commission of the General Assembly, which has been lately laid on the table of the House, against this Bill. They state that, "as ministers and elders of the Established Church of Scotland, they feel aggrieved by this proposal; that, according to the constitution of the Church of Scotland, ratified by Act of Parliament, and guaranteed in the integrity thereof by the articles of union, they are expressly forbidden to recognise the marriages contemplated by this measure, and, on the contrary, are required and bound to deal with such marriages as incestuous connexions, it having been declared in the confession of faith of the Church, ratified by law, chap. xxiv. sect. 4, that 'the man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own.'" The Reformation, therefore, throughout the British islands was clearly unanimous upon this point. But the honourable member for Southampton referred to the practice of foreign Protestant States. What, then, is the case in Switzerland, the country of Calvin? Why, throughout Protestant Switzerland the prohibition of marriage with a deceased wife's sister was retained at the time of the Reformation as one of the prohibitions imposed by the Divine law; and it is still

Germany

prohibited; and to this day no dispensation for such a marriage can be obtained in any of the Protestant cantons. What was the case in Germany? I am content to take the facts as to Germany from the evidence of Mr. Bach, the only witness examined as to the law of foreign states before the right honourable gentleman's Commission. In reply to question 989, "In Protestant Germany, what are the limits within which a dispensation is necessary for a marriage so as to make it free from objection?" Mr. Bach said, "The Levitical law, as the revealed law by the Divine dispensation, being the foundation of the canon law of the Church of Rome, as regards the prohibited degrees of marriages; the latter law gradually underwent those modifications which the Reformed religion required, and is now called the Protestant ecclesiastical law, though the canon law of Rome has not been altogether abrogated in Protestant Germany; and the Reformed divines, in advising the establishment of consistorial courts to supply episcopal jurisdiction, were particularly anxious to uphold the authority of the Church in matters relating to marriage. Where the secular law has not interfered in modern times, as, for instance, in Prussia, *marriages in those degrees which are not prohibited by the Protestant ecclesiastical law, of which the Levitical law remains the groundwork, do not, of course, require dispensation,* such as marriages with a first cousin." That is to say, by the Protestant ecclesiastical law of Germany, established at the time of the Reformation, all marriages were left free to be solemnised without any dispensation, except those which were held to be prohibited by the Levitical law, but marriages within the Levitical degrees were prohibited, and could only be solemnised by special dispensation; the practice of dispensation within certain of those degrees (sometimes by royal and sometimes by ecclesiastical authority) being re-

tained throughout Germany till the year 1791, and to this day in all parts of Protestant Germany except Prussia. The question is, whether by the law of Protestant Germany marriage with a deceased wife's sister was held to be within the Levitical prohibitions? and the test is, whether it was allowed to be solemnised without a dispensation? Now, such a marriage was *not* allowed to be solemnised without a dispensation; it was, therefore, held to be prohibited by the Levitical law. It was placed upon the same footing with marriages between a woman and her husband's brother, or an uncle and his niece, both of which were prohibited, but dispensable, marriages. At this day no such marriage can be solemnised without a dispensation in any part of Germany except Prussia; and in Prussia it could not be solemnised without a dispensation, till the general abolition in that country of all dispensable prohibitions in 1791. In Holland the same prohibitions, founded on the same principle and accompanied by the same practice of dispensation, also prevail; and the result, therefore, is, that by the clear unanimous judgment of the whole Protestant Reformation, the particular species of marriage now under discussion was held to be included within the Levitical prohibitions. There might be private individuals, from time to time and in different countries, who dissented from this judgment; but the general voice of Christendom was everywhere against them; and the exceptions to the rule were not more numerous nor of greater weight than must always be found on all questions capable of controversy: and since the times of the Reformation, all the divines of the greatest note in England, who have spoken upon the subject (I do not mean living men), have expressed their individual concurrence in this judgment of the Church. Jewell has been already quoted by the right honourable gentleman the member for Cam-

bridge. Hammond is of the same opinion, so is Bishop Patrick, so is Matthew Henry, the great Nonconformist commentator, so is Thomas Scott, a writer of the highest authority among the modern evangelical clergy.

But the honourable and learned member for Southampton has referred to one authority which he considers greater than all these—to Bishop Jeremy Taylor, "that great bishop and divine," to whose writings the honourable and learned member is so much addicted that he calls him "his favourite authority;" and he flatters himself that, upon this point, the views of that great man correspond with his own. In the passage which the honourable member read to the House, Bishop Taylor argues against the prohibition of marriages between first cousins; and the honourable member boldly transferred that argument to the present case of marriage with a deceased wife's sister. Fortunately, however, we are not left to make any such inference as to the opinion of Bishop Taylor on the particular question before the House. There is another passage in the same work, directly in point, which the honourable and learned gentleman did not read; but I will supply the omission. The bishop is discussing the meaning and extent of the terms "near of kin," in the 6th verse of the 18th chapter of Leviticus. "Hemingius," he says, "gives a rule for this as near as can be drawn from the words and the thing: '*Propinquitas carnis*,' saith he, '*quæ me sine intervallo attingit*.' That is, 'She that is next to me, none intervening between the stock and me;' that is, the propinquity or nearness of my flesh *above* me is my *mother*, *below* me is my *daughter*, *on the side is my sister*, this is all, with this addition that these are not to be uncovered for thy own sake; thy own immediate relations they are; all else which are forbidden, are forbidden for the sake of these; for my mother's or my father's, my

son's or my daughter's, my brother's or my sister's sake. *Only reckon the accounts of affinity to be the same:* 'Affinitates namque cum extraneis novas pariunt conjunctiones hominum, non minores illis quæ e sanguine venerunt,' said Philo; '*Affinity makes conjunctions and relations equal to those of consanguinity;*' and, therefore, thou must not uncover that nakedness, which is thine own in another person of blood or affinity, or else is thy father's or thy mother's, thy brother's or thy sister's, thy son's or thy daughter's nakedness. This is all that can be pretended to be forbidden by virtue of these words *near of kin*, or *the nearness of thy flesh.*"* Here, therefore, the honourable and learned gentleman's own favourite authority lays it down as the true rule for interpreting the 18th chapter of Leviticus, that all degrees which are forbidden in consanguinity are also forbidden in affinity; a rule which places marriage with a wife's sister upon the same footing as marriage with a sister by blood.

Such are the foundations among us of the law which it is now proposed to repeal; and I will next consider the arguments drawn from the change made by Lord Lyndhurst's Act in 1835.

A great deal has been said about Lord Lyndhurst's Act, as if it dealt with the particular class of marriages which it is now proposed to legalise in a different manner from other marriages within the prohibited degrees; and it is insisted, that certain marriages of this kind were rendered valid by this Act, and that it is, therefore, a legislative recognition of the propriety of those marriages in a moral and religious point of view; and much has been urged as to the private and personal motives which are alleged to have led to the

* Taylor's "Rule of Conscience," chap. ii. rule 3, vol. xii. p. 325, Heber's edition.

introduction of that measure. Now I know nothing of Lord Lyndhurst's motives or of the motives of any other person; but when I look to the Act itself, and to the state of the law which preceded it, I find there no ground whatever for any of these observations. Upon this point I would adopt some very just remarks made by Mr. Justice Coleridge, in the case of Chadwick, lately before the Court of Queen's Bench. "It seemed to me, I own," said that learned judge, "to be a little fallacious to direct our attention to the shifting and tergiversation of the legislature, with regard to this or that particular marriage, for the establishing or the annulling which great political interests were at work, and to say that on that account God's law had been pronounced different ways in the course of those different statutes. If the statutes themselves are looked into, they are not open to that remark at all. It will be found that whenever they lay down the law generally, they lay it down with great uniformity, and with direct reference to the Levitical degrees." Upon the face of Lord Lyndhurst's Act, there is no trace of a distinction between the marriages which the right honourable gentleman has taken under his patronage and marriages within any other prohibited degrees of affinity; there is not the least indication of a purpose to alter either the principle or the extent of the former legal prohibitions; the principal object and effect of that Act is to enforce all those prohibitions in a more stringent and summary way for the future. The previous state of the law was this. All marriages within the prohibited degrees were alike unlawful; and in a uniform course of decisions, the courts, both civil and ecclesiastical, had held that the same rule applied to marriages with a deceased wife's sister as to any other prohibited marriage. But these prohibitions did not enforce themselves. A marriage contrary to any one of them was a bad marriage, and

Lord Lyndhurst's Act

when questioned before the proper tribunal, was pronounced to have been always bad and void from the beginning: but the Ecclesiastical Courts had the only jurisdiction over such questions, and no man was at liberty to treat a marriage solemnised *de facto* in the face of the Church as void until its invalidity had been the subject of adjudication in the Ecclesiastical Court, which could only be during the lifetime of both the parties. This is the meaning of the distinction between voidable and void marriages. A marriage, which no man could treat as void without a sentence declaring it to be so, was said to be voidable; and this was the situation of all prohibited marriages—of marriages within the degrees of consanguinity as well as those of affinity—until the passing of Lord Lyndhurst's Act. It was a mere question of form,—a question, not of principle, but of administration purely; but the consequence of such an imperfect mode of enforcing the prohibitions was, that the *status* of the issue of all prohibited marriages was left uncertain during the joint lives of both the parents; and, if either parent died, the law could not be enforced at all, even against a man who had married his own sister, or (a case more likely to happen) a man who had married his niece, or his wife's mother, or his wife's daughter; between which cases and that of a wife's sister there was no distinction known to the law. Now, it was considered desirable that this state of the law should not continue; that the prohibitions should be maintained and enforced; that for the future there should be no mode of escape or evasion; and that the *status* of the children should not be left in uncertainty for a moment. Lord Lyndhurst's Act was therefore passed; and it enacted that, for the future, all marriages within any of the prohibited degrees of consanguinity or affinity should be *ipso facto* void, and that no sentence of the Ecclesiastical

Court should be necessary for that purpose. The change, such as it was, affected marriages with a wife's sister only in the same way in which it affected marriages with a wife's mother, or daughter, or with a brother's widow; as to all which marriages the right honourable member for Bute proposes now to leave the operation of Lord Lyndhurst's Act entire and undisturbed. But then it is said, that while the Act in effect annulled all future marriages with a wife's sister, it confirmed and gave validity to those which had been previously solemnised. Here, again, is the fallacy of representing that the Act had some peculiar operation with respect to the case of a wife's sister. But the truth is, that the Act (dealing no doubt more leniently with past marriages within the degrees of affinity than with those within the degrees of consanguinity) placed all past marriages *within any of the prohibited degrees of affinity* on an equal footing, and gave an indemnity to them all. If it gave validity to past marriages with a wife's sister, it gave equal validity to past marriages with a brother's widow, or with a wife's mother or daughter,—marriages which nobody now denies to be incestuous. The right honourable gentleman draws a broad distinction, in point of morality and religion, between the one of these classes of marriages and the other; but the Act of Lord Lyndhurst dealt with them all exactly alike. And, after all, it is not true that Lord Lyndhurst's Act, notwithstanding its title, did declare any of these marriages valid;* much less that it gave encouragement to any one individual to contract

* This is expressly laid down and explained in the judgment of Sir Herbert Jenner Fust, the Judge of the Arches' Court, when commenting upon Lord Lyndhurst's Act in the case of Sherwood *v.* Ray. Those who wish to understand the legal construction and operation of this statute will find many useful remarks in this judgment, as stated in the second volume of Burn's "Ecclesiastical Law" (Phillimore's Edition), p. 501, *c. d. e.*

them. The clause in question (I am not concerned to defend, but only to explain it) is a mere clause of indemnity; it took away the means which previously existed of declaring these marriages void by that form of proceeding in the Ecclesiastical Courts, which it was the object of the Act to abolish and render unnecessary for the future; and it would not have been consistent with the principles of English legislation to give a retrospective effect to the altered state of the law. The indemnity was given, not in all cases, but only in cases in which no proceedings had been commenced previously to the passing of the Act—such proceedings might have been commenced at any time between the introduction of the Bill and the day when it received the royal assent*—but if this were not done, then the Act was to operate as a kind of Statute of Limitation with regard to marriages previously contracted: and it is to be defended, if at all, upon the principle that the parties might have married speculating upon the probability, which the imperfect state of the law then held out, of their marriage passing without challenge, and that such cases could never occur again. The Act gave the benefit of an indemnity to those particular cases, and at the same time established the general prohibition on a more firm basis than before. That indemnity affords neither a principle nor a precedent for the present Bill:—not a principle, because it extended to marriages and degrees which the present Bill does not propose to legalise; not a precedent, because all marriages contracted since the passing of that Act have been contracted in the face of a recent and known law declaring such marriages absolutely void.

Then, under what circumstances, and on what grounds, are we now asked to pass the present Bill?

* The suit of Sherwood *v.* Ray was actually commenced, to annul a marriage with a wife's sister, while the bill was before Parliament; and the marriage was annulled.

Since the passing of Lord Lyndhurst's Act an agitation of a very peculiar kind has been going on, and systematic attempts have been made, with very great industry and perseverance, to persuade the country that the law was doubtful, and that the case of a wife's sister was not within the prohibited degrees mentioned in that Act, in short that a man might marry his wife's sister without any alteration of the law. Legal agents were employed, and years were spent in propagating these pretended doubts, and this supposed doubtful state of the law formed one main ground on which the Royal Commission moved for by the right honourable gentleman the member for Bute was issued. Happily, however, the parties were bold enough at last to bring the question under the decision of a court of law; and in Chadwick's case, which was decided after this Commission had issued, but before it had made any report, all this fabric of doubts, which so much perverse ingenuity had been employed to raise, was at once demolished.* Lord Denman, in pronouncing the judgment of the court against the validity of such marriages, said, "Upon the authority to be found on this subject, there is such a fulness and uniformity of decision as in my judgment to remove, in a remarkable degree, all doubt from this case. . . . There is such an extent of authority as no other case perhaps could shew." And I will venture to prophesy that, whenever a court of law is again appealed to, many of the other pretended doubts, which are still circulated and put forward as reasons for altering the law, will be found equally groundless; and all the idle attempts made by unfortunate persons, under evil and ignorant advice, to escape from the laws of their country, by

* Mr. Justice Erle, the one eminent lawyer from whom, while at the bar, Messrs. Crowder and Maynard had succeeded in obtaining an opinion favourable to their views, concurred in this judgment.

going to Altona or to Scotland, and then coming back to live as married persons in England, will meet with the same fate as soon as ever they are brought to the test of judicial decision. To go to Scotland, of all countries! Why, the right honourable gentleman the Lord Advocate of Scotland, though himself inclining to a different opinion, admits in his evidence before the Commissioners that all the leading text writers on Scotch law have always laid it down, that a man could not marry his wife's sister in that country; that such marriages are unquestionably prohibited by the ecclesiastical law of Scotland, and that they have been punished as incest in former times by the temporal tribunals. And yet, in the face of all this authority, those bad advisers induced parties in this country to believe that such marriages might safely be contracted in Scotland; and it is impossible not to see that very many of the violations of the law mentioned in the evidence before the Commissioners are directly attributable to the mischievous industry with which doubts which had no real foundation were invented and propagated by these agitators. The late decision of the Court of Queen's Bench must now convince the unfortunate victims of these delusions that they have been misled; and as the law is now settled and understood, there is great reason to believe that, if not disturbed by new legislation, it will for the future be better obeyed.

I now come to the Commissioners and their report. And first, let us see the character of the evidence and information on which we are asked to legislate. It does not appear how the inquiry was conducted by the Commissioners, or upon whose suggestion their witnesses were selected or examined; but the result is, that they have examined *thirty-six witnesses in all opposed to the present law, and only five in favour of it.* Of those thirty-six, who agree with

the right honourable gentleman, *ten* are lawyers employed by Messrs. Crowder and Maynard to get up evidence in favour of their case; *sixteen* are persons avowedly more or less interested in a change of the law; two are Dissenting ministers, one a Roman Catholic bishop; two are jurists (Mr. Bach and the right honourable gentleman the Lord Advocate); the remaining five are clergymen of the Church of England;—who are set off against five other clergymen of the Church of England, *the only witnesses examined on the opposite side.* Now, could any possible mode of conducting such an inquiry be more one-sided or more unsatisfactory than this? I cast no imputation upon the Commissioners, or upon the right honourable gentleman the mover of this question; it may have been their misfortune, or some error of judgment, or some defect which I may not understand in their means of conducting the inquiry; but the result is, that we have nothing before us on which it is possible for a reasonable man to legislate. I do not say that the evidence of interested persons was not important, or that it was improper even to examine Mr. Crowder and his agents: it was no doubt quite proper that those on that side of the question should be heard. But that such evidence should form the whole staple of the inquiry, that the Commissioners should have made their report, and that Parliament should be asked to legislate upon materials consisting almost exclusively of the reports and opinions of parties so deeply committed to one view of the case, is a circumstance of which I think the House and the country have just reason to complain. Without questioning the veracity of such witnesses on questions of fact, it is quite clear that no weight can be due to their opinions, or to what they say of the opinions of others. People who marry their wives' sisters of course defend their own acts, and necessarily associate chiefly with those

who do not condemn them: and legal agents sent over the country to get up a case for an alteration of the law, as a matter of course, put themselves in communication everywhere with those who are known to dislike the law, and are thrown into direct contact with all the opinion which exists in society on that side of the question, their object being to organise that opinion, and bring it to bear upon the legislature. But it is no part of their object to acquaint themselves with the extent of opinion which exists on the other side; and their proceedings can have no tendency to make them generally acquainted with it. In judging, therefore, which way the opinion and moral feeling of the country preponderate, all such evidence as this ought to be entirely set aside, or received, at all events, with the greatest degree of distrust and qualification.

This being the character of the evidence, on what grounds do the Commissioners recommend an alteration of the law? They suggest four principal grounds: first, that public opinion is to a great extent favourable to the proposed change; secondly, that the law has failed to effect its object, which they assume to be the prevention of these marriages; then, that the prohibition operates as a cause of immorality; and lastly, that the laws of foreign countries on the subject differ widely from our own, and that this difference is productive of inconvenience. Now, I propose to address myself to each of these points; and first, with regard to the state of opinion in the country. What is the state of opinion in England, Scotland, and Ireland? The great mass of the evidence taken before the Commissioners applies exclusively to England: and, setting aside the gentlemen sent to collect evidence and the parties personally interested, as being necessarily biassed and chiefly conversant with those who are favourable to a change, there will be found no proof that opinion in any class of the community is decid-

edly in favour of the alteration. The Commissioners claim the Dissenters generally, and the Roman Catholics, as on that side; but only two Dissenting ministers were examined, and they (as well as Dr. Bunting, whose letters are printed in the appendix), prove that there is a difference of opinion among the members of their denominations; and the House has seen to-night that opinion is also divided among the Roman Catholics. The noble lord the member for Arundel* (than whom no man is more respected in this House) has given in his adhesion to-night to the opinion expressed by Bishop Wiseman in favour of the present Bill. But the honourable member for Limerick,† who followed him in the debate, has informed us that the opinion of the Irish Roman Catholics, as far as he is acquainted with it, is widely different; and he has spoken against this measure, not in his own name only, but also in that of an eminent Roman Catholic bishop, whose judgment may very fairly be set against that of Bishop Wiseman. As for the Church of England, the Commissioners admit that the great majority of the clergy are decidedly opposed to this change; and they also admit that the prevalent feeling among the laity is the same. Then, with respect to Ireland, the Commissioners took means for ascertaining the state of opinion in the Established Church of Ireland, which it is to be regretted they did not also take with respect to the Church of England. Dr. Lushington wrote to the Primate of Ireland, requesting him to ascertain the sentiments of his clergy. A more proper step could not have been taken; and I wish to call the attention of the House to the reply of the Archbishop of Armagh to that letter, because I think the House will concur in the surprise of the archbishop that such a mode of inquiry should have been

* Lord Arundel and Surrey. † Mr. John O'Connell.

confined to Ireland, especially after the suggestion made in that reply, that it should be extended to England also. The archbishop says,* "I should have replied to your letter of the 20th inst. immediately on receiving it, but that I wished previously to inquire what steps had been taken, or were about to be taken, by the Archbishop of Canterbury for the purpose of ascertaining the opinions of the English clergy on the subject of marriages within the prohibited degrees, as I felt at a loss to know what mode of proceeding it would be best to adopt, with a view of obtaining the sentiments of the Irish clergy on this subject, and I presumed that the Commissioners had addressed to his Grace a communication similar to that which I received from you. This, however, I find has not been the case." What the archbishop did was to endeavour to collect the opinions of the whole clergy of Ireland through the bishops and the rural deans; and the result was, to obtain a clear expression of the almost unanimous opinion of the whole Church of Ireland against these marriages, as prohibited by the Divine law and socially inexpedient; and at the same time to supply proof that the law is practically obeyed on this point throughout Ireland. Similar evidence was obtained, and to the same effect, as to the opinions and practice of the Irish Presbyterians; and the honourable member for Limerick has told us to-night that among the Irish Roman Catholics such marriages as these are unknown. In all Ireland, therefore, and by all classes in Ireland, the law is respected, approved, and obeyed: and the Commissioners acknowledge that in Scotland it is the same; throughout Scotland marriages of this description are abhorred as incestuous, and in practice scarcely ever occur. It is clear, therefore, from the experience of Scotland and Ireland, that

* Appendix No. 30 to Commissioners' Report.

this is not a law which human nature cannot be induced to obey; and it is only owing to the unhappy religious destitution in which too many parts of England have been left, the consequent immorality and negligence of all law, human and divine, and the doubts spread by industrious agitators, if this law has been less universally obeyed here than in Scotland or Ireland.

There is, therefore, no failure of the law in Scotland or in Ireland: and I shall be able to shew that it has not failed to effect its object in England either. The Commissioners reason as if the success or failure of the law could be measured by the proportion of the cases in which parties avowing a desire to marry their wives' sisters have been prevented from doing so, to the cases in which such parties have not yielded to its restraint. Mr. Foster tells them that 1500 persons have married their wives' sisters notwithstanding the law; and that "*eighty-eight cases of marriages are known to have been prevented* by the existing law;" of which thirty-two resulted in cohabitation; and so they take these numbers, 88 to 1500, as indicating the proportion borne by the success of the law to its failure. But what a fallacy this is! The real success of such a law is, in producing a state of society under which well-principled people consider it as impossible to marry their wives' sisters as their own, and are, therefore, prevented from ever feeling the desire to do so. Exactly in proportion as the law produces this effect, you will not, and cannot, have persons coming to tell you, that they would marry their wives' sisters but for this law. How many thousand cases there are in which widowers are on the terms of brothers with the sisters of their wives, to whom the thought of marrying them never occurs, and who, if it did, would repress it with abhorrence? Of these cases there can be no evidence; yet they are the true test

of the success of the law; and that this is the general operation of the law who can doubt, with the knowledge which we all have of the footing on which sisters-in-law are received in English families?

But I am not obliged to stop here, for I find, in the evidence before the Commissioners, proof of the success of the law of the strongest kind; proof of the successful operation of the law among classes of persons who, in the opinion of the Commissioners, would willingly see the law altered; I mean the English Dissenters. Mr. Thorburne, in his evidence (Q. 122), mentions the case of a Quaker, who married his wife's sister, and was, in consequence, obliged to leave the Society of Friends; "It being part of the rules of that body, that, no matter what the state of the law is in this country, members of the Society of Friends must respect that law of which they claim the benefits." The Quakers, therefore, enforce this law upon their members under the penalty of the loss of membership. Dr. Bunting, an eminent Wesleyan minister, bears, in his letter (Appendix, No. 38), the following remarkable testimony to the preventive efficacy of Lord Lyndhurst's Act among the Wesleyans:—

"*Before* the change in the law effected by Lord Lyndhurst's Bill, there were, from time to time, cases of the marriage even of some of our ministers with the sisters of their deceased wives, which were not *generally* regarded as so disparaging to the parties as to call for any expression of official disapprobation, or for the exercise of ministerial discipline. It was felt, I believe, that the matter, in the absence of any recognised prohibition of Scripture, must be left to individual judgment and discretion. *Since* 1835, however, it has been universally admitted among us as a sound principle that, on the general ground of the Scriptural duty of all Christian

people 'to submit themselves to every ordinance of man for the Lord's sake,' the members of our societies in this country are bound by the law of Christ to conform themselves in all arrangements concerning marriage to the actual laws and institutions of the realm. *So long, therefore, as the present legal prohibition shall exist it would not, I think, be deemed right or seemly in any of our members to act in violation of it; and the position of the parties would be, as far as our community is concerned, very disadvantageously and painfully affected by it.*"

The moral feeling, therefore, of the Wesleyan body is on the side of obedience to this law; they visit with reprobation those who violate it. There is similar evidence as to the Baptists;* so that the whole body of Dissenters, whatever opinion they may entertain upon the abstract moral and theological question, recognise the moral obligation of obedience to this law as long as it is the law of the land, and because it is the law of the land; and in enforcing it you have the powerful aid of the whole moral influence of those religious communities.

Then, with regard to the demoralising effect which the Commissioners attribute to the present law, surely it is not to be said that the law is evil merely because it is not obeyed. What law is universally obeyed? What possible legislation can secure the observance of any rule of morality? At all events, before legislating on such a principle as this, we ought to pause and inquire what is the standard of morality, in other respects, of the classes among whom the violation of this law is said to prevail; we ought to see how far this principle of altering the law because some persons

* Dr. Cox says (evidence, Q. 866), "I should not myself hesitate unless the law interposed; *of course we should obey the law as it stood, whether right or wrong in our particular view;*" and see his answer to the two next questions.

disobey it, is to carry us. Marriages of this description are in themselves either incestuous or not; if they are incestuous, you may pass an act of Parliament to allow them, but they will remain just as immoral as incestuous cohabitation without marriage was before.

And, after all, to what extent is the violation of the law, with the alleged immoral consequences, proved to prevail? Messrs. Crowder and Maynard have been at work for eight or nine years; and they have collected 1500 cases of marriage, and thirty-two cases of concubinage, said to be owing to the prohibition of marriage between widowers and their wives' sisters—nearly all in the middle ranks of life—extending over a period of more than fifteen years. The inquiry which they made embraced all the great masses of population in England, except the metropolis,* all the great seats of religious and moral destitution and neglect. These are the facts; the rest is all imaginary calculation, based upon the assumption that the cases actually discovered by this inquiry ought to be multiplied in a certain arbitrary ratio throughout the kingdom. With respect to the poor—the labouring classes—whose supposed interests in this question have been so much insisted on in argument, there is absolutely no evidence whatever: as to them, the case is all conjecture. In order to judge of the value of the facts ascertained, we ought to have had much further information, which this report does not give us. We ought especially to have known the statistics of other kinds of incest; but it was no part of the business of Mr. Crowder's agents to collect accurate information upon such subjects, although some incidental light is thrown upon them by several parts of the evidence. Mr. Foster† had upon his list some cases of marriages with a brother's widow (the exact

* It extended partially to the metropolis.

† Evidence, QQ. 17 and 18.

number is not given), "one or two" with a wife's mother or daughter; and about six with an own niece. Mr. Sleigh* "heard of a village or hamlet," near Wakefield, in which "the morals of the people were extremely lax indeed, and in which *uncles and nieces cohabited;*" but he "did not hear of any marriage having taken place between them." Mr. Brotherton,† in the Birmingham district, met with "several" cases of marriage within the prohibited degrees of consanguinity, though he thought their proportion to those within the prohibited degrees of affinity was very small; and, *in some of these cases, he did not observe that they were differently regarded by the people from other marriages.* Mr. Paterson's evidence shews how it is that we have not more information upon this point. He is asked (Q. 99), "Did you find any cases of marriages within the prohibited degrees of consanguinity?" His answer is very candid: "No; *I did not inquire for them;* but I do not remember to have heard of any; *if there were, I never reported them, and paid no attention to them.*"

A great deal has been said about the respectability of the parties who have offended against this law. Upon that I shall only make this observation, that no parties could have such a marriage as this solemnised in England without either committing perjury, or practising a deception equivalent to perjury in moral guilt. Out of the 1500 marriages with a wife's sister, mentioned by Mr. Foster,‡ only thirty-eight were solemnised out of England. Consequently, the parties in the other 1462 cases must have been guilty either of perjury, or of falsehood equally immoral; and I cannot understand how any one can think himself on safe ground when he relies upon the respectability of such persons as these, as evidence

* Evidence, Q. 63. † Ibid. QQ. 74–77. ‡ Ibid. Q. 19.

that their conduct would have been moral under a different state of the law.

I have now to deal with the remaining argument of the Commissioners, that founded on the inconsistency of our marriage-law on this point with the laws of foreign countries—of Prussia and the rest of Germany, France and America—and with the Roman Catholic system of dispensation. Now, the first observation which occurs upon this point is, that you cannot avoid a conflict between your law and the laws of these countries, merely by altering your law as the right honourable member for Bute proposes to alter it. You cannot confine your attention to this one article in those laws, without looking at the whole scheme and system of them, and seeing whether you are prepared to follow it in other respects or not. But if the laws of those countries are to furnish the rule—if their example is to be imitated, the measure of the right honourable gentleman will be found quite insufficient, and *all* the prohibited degrees of affinity (instead of two only), together with some of consanguinity, must be altogether abandoned. Mr. Justice Story has been referred to as a great authority, both for his own individual opinion on this subject and with respect to the law of America. But Mr. Justice Story * says, he can find no natural principle on which any prohibited degrees of affinity, or those of consanguinity more remote than brother and sister, can be maintained. In Prussia, if a man may now marry, without dispensation,† his wife's sister, he may also marry his wife's mother or daughter, his brother's widow, or his own niece. In the rest of Protestant Germany, in Holland, and in France, persons in all degrees of affinity, and uncles and nieces,

* Citing and adopting the opinion of Chancellor Kent (see "Commentaries on the Conflict of Laws," ch. v. sect. 114).

† Dispensations were abolished in Prussia in 1791.

may marry by dispensation; and a dispensation is equally required for marriage with a wife's sister. It is the same throughout the Roman Catholic Church. The House will remember the recent instance of Count Trapani, the uncle of the Queen of Spain, who was amongst the number of her suitors. Notwithstanding the relationship subsisting between them, he was considered to be a suitable consort for the Queen of Spain, and there can be no doubt that if the negotiation had terminated favourably, a dispensation would have been obtained. If Parliament is to accommodate the law of this country to the practice of Protestant Germany, we must allow uncle and niece to marry; and if we imitate the law of France, we shall do the same.

The experience of those nations ought to operate, not as an example, but as a warning,—a warning, that if we depart at all from the code of prohibitions settled in this country at the time of the Reformation, we shall find no principle at which to stop; we shall immediately be carried out of our depth.* The sub-

* An instructive proof of the unsettlement of principle on the subject of marriage, with which we are threatened, may be found in a comparison of the discordant opinions of the five clergymen, two Dissenting ministers, and one Roman Catholic bishop, who gave evidence before the Commissioners in favour of marriage with a wife's sister. The only two of those witnesses who are content with the simple ground, that they collect a permission of marriage with a wife's sister from the text of Leviticus, are Mr. Hatchard and Mr. Jenkins. *Mr. Owen* (Q. 787) and *Dr. Cox* (QQ. 845, 846) say, they do not consider the Levitical prohibitions to be part of the moral law of God or binding at all upon Christians. *Dr. Binney* (Q. 995) observes, that "it is impossible to determine, in most cases if not all, what original dictates of nature are or may be, as distinct from those superinduced sentiments and feelings which are engendered by habit, or created by law." He thinks it questionable, whether the Levitical prohibitions "are laws regulating marriage, or whether they are only prohibitions of the grosser forms of irregular sexual intercourse;" and he appears to adopt the latter view;

jects of divorce and of bigamy must follow next; no mistake can be greater than to suppose that those subjects are unconnected with this. Wherever the prohibitory degrees have been relaxed, there has been an increasing laxity in the point of divorce also. In Prussia and other parts of Germany at this day, divorce is permitted for all kinds of reasons, whenever the parties are desirous to separate. Men of as great name and authority, and of as pure lives, have drawn arguments from Scripture in support both of polygamy

and to consider that marriage *between brother and sister* was not prohibited to the Jews; and that no distinction can be made, in the interpretation of Leviticus, between the case of a wife's sister and that of a brother's widow. *Mr. Garbett* (Q. 1062) thinks the principle of the Levitical prohibitions is physical; to prohibit marriages "in which the consequences, among other evil effects, seem to induce natural depravation or deterioration of the species;" and he conceives that, in this respect, the two cases of marriage with a wife's sister and marriage with a husband's brother are not entirely parallel; and that, "*in the one case, there might be a natural deterioration of the species, inasmuch as there would be a close connexion of blood, which there would not be in the other case.*" (What this may mean, it seems hard to understand.) *Mr. Denham* (Q. 413) considers the moral part of the Levitical law binding, as a *republication of the law of nature;* and he "believes, that a marriage with a deceased wife's sister is *not contrary to the law of nature, because it never was prohibited or decided against by any moralist or legislator of antiquity throughout the world; but every other marriage prohibited in the Levitical code was prohibited by the Greeks and Romans as a violation of the laws of nature, independently of the knowledge of Revelation:*" and the same gentleman seems to look upon Parliament as practically infallible in moral questions, saying (Q. 416), "I should not consider *my private interpretation of any portion of the Scriptures* a sufficient warrant to refuse a duty which was *sanctioned* or required of me by the law of the land." *Dr. Wiseman* considers *all* the prohibited degrees "matter of ecclesiastical legislation" (Q. 1161); and that there are no prohibitions of marriage in Scripture which bind the Church: and certain older Romish doctors (Henriquez, Cardinal Cajetan, and Reginaldus, quoted by Dr. Pusey, Q. 488) appear to have held, that the Pope might, for weighty reasons of temporal expediency, allow a *brother to marry his own sister*, or a *grandfather his grandaughter!*

and of the loosest system of divorce, as any who now advocate the lawfulness of marriage with a wife's sister; and all the arguments from social morality and convenience now used in favour of the right honourable gentleman's Bill, have been used with at least equal force in favour of an increased license in those respects. Milton, in two celebrated treatises, gave the weight of his great name, and exerted to the utmost his vast learning and wonderful powers, in order to prove that the prohibition of divorce for causes other than adultery was not really Scriptural; that it was contrary to the purposes of the institution of marriage, and an infringement of the natural liberty of men. Towards the end of the last century, in 1781, Mr. Madan, a learned clergyman of the Church of England, the brother (I believe) of a bishop, published a remarkable work, entitled "Thelyphthora; or, a Treatise on Female Ruin, in its Causes, Effects, Consequences, Prevention, and Remedy, considered on the Basis of the Divine Law;" in the advertisement prefixed to which I find it stated, that the manuscript was submitted to "many eminently learned and pious men," and that the work was published "with their entire approbation." In this work the writer contends most strongly for a limited allowance of polygamy: he can find no prohibition of it in Scripture; he traces to the want of it some of the most frightful disorders of society. "That polygamy," he says, "is lawful in itself, and in many cases expedient—in some a duty—none will deny, who will yield to the testimony of the Scriptures and the plain matter of fact." * In another passage, he states the grievance of which he complains, the practical case for a limited allowance of polygamy, in terms which very nearly resemble those used by the honour-

* Thelyphthora, vol. iii. p. 371.

able and learned member for Southampton, when expatiating on the moral and social evils which he considers to result from the prohibition of marriage with a wife's sister. "The indiscriminate and total prohibition of polygamy, as it has no warrant from the Word of God, may also be the means of plunging many into the mischiefs of uncommanded celibacy; for many men there are, who very early in life marry, perhaps without all the consideration which ought to be exercised in so momentous an undertaking: many things may happen, which may be very reasonable, and indeed unavoidable, causes of separation from their wives; as, for instance, incurable disease of mind or body; unconquerable violence of temper; perpetual refractoriness of disposition; levity of behaviour, though not amounting to such proof as to be the ground of utter *legal* divorce, yet such as may destroy the whole comfort of a man's life. By these and other means, a husband may be reduced to the situation of an unmarried man, harassed by the same desires, subject to the same temptations; yet his condition is tenfold worse; the one may marry, the other cannot: so he must remain helpless and hopeless, or plunge into vice and misery, because he is debarred of the remedy which God has provided, stripped of that undoubted privilege with which God and nature have invested him, by the lyes and forgeries of fathers and councils, &c."* Now, is not that just as true as the case made in favour of the present Bill? Mr. Madan's argument from Scripture, and against fathers and councils, in favour of polygamy, is, to say the least, as plausible as that of the honourable and learned member for Southampton: and as to the facts, it cannot be denied that, in the main, what Mr. Madan says is true. Many persons are separated from their wives

* Thelyphthora, vol. i. p. 181.

through unavoidable causes, not entitling them to a legal divorce; very great misery, very great temptations to immoral living, and a vast amount of actual immorality, do ensue; and it may be said in that case, with as much appearance of truth as in this, that all that misery and immorality is owing to the state of the law. I cannot help wishing that we could have access to the statistics of bigamy* and immoral cohabitation under such circumstances; because I feel very sure, that if the same industry were used to get up a case for the alteration of the laws of bigamy and divorce, which has been used by the promoters of the present Bill, I feel perfectly sure, that a very much stronger case of the same kind would be disclosed. Among the poor, among the labouring classes, who are often separated from their wives by the nature of their service, and other causes, such violations of law and morality are, I am satisfied, far more common than marriage, or any other kind of connexion, with a wife's sister; and though offences of this nature are not pardonable, certainly, it is impossible not very often to feel great compassion for those who commit them: and, in the same way, I hope it will not be supposed that I am without feeling for those unfortunate persons, who have been led to marry the sisters of their wives, especially when they have done so in

* It appears by the Returns of Crime annually laid before parliament, that, during the thirteen years ending 31st December, 1847, the number of *prosecutions* for bigamy in England and Wales was 797. This is, of course, a very inadequate test of the frequency of the offence in our thickly-peopled districts; an offence known to occur in all ranks of life (the celebrated Duchess of Kingston and the late Lord Stair are examples in the highest), but, on account of the penalties attached to it, naturally most frequent among the poor. If it were merely prohibited by law, without being punished as a crime, it would, no doubt, be infinitely more common than it is; and, where the law now prevents it, cohabitation is usually the result.

ignorance, or under the influence of evil counsels calculated to mislead their judgment. But the laws of morality must not be made to bend to individual cases; and the proper mode of correcting such evils as these, among all classes, is not by degrading the law to the level of the practice of those who break it, but by holding up a sound standard of morality to the people, and by increased exertions to enlighten ignorance, alleviate distress, and extend the knowledge and practice of religion.

Sir, I am sensible that I have trespassed at too great length upon the House. I will not follow the right honourable gentleman the member for the University of Cambridge, over the ground which he has so well occupied, when he dwelt with so much eloquence and feeling upon the social and domestic advantages of the present law.* One word on that part of the subject, and I have done. The honourable member for Southampton has admitted, that the effect of the present Bill, if carried, will be for the future to place our sisters-in-law, with whom we now associate as freely and intimately as if they were our own sisters, upon the footing of first cousins. How cruel a privation this will be! We shall be deprived

* The social need of unrestrained intimacy between relatives of both sexes in the nearest degrees of consanguinity and affinity, and of a strong security against abuses of that intimacy, may not improbably be among the final causes of the Divine prohibitions on this subject; and if so, the prohibitions might, on natural principles, be expected to be commensurate with this occasion for them, which clearly extends to the case of a wife's sister. It appears, from an extract given in a letter published in the "Times" newspaper on the 14th May, 1849, that this view is suggested by Maimonides, a Rabbinical writer of great authority; whose opinion as to the lawfulness of marriage with a wife's sister (like that of Philo, as quoted by Bishop Jeremy Taylor, *supra*, p. 24), seems to have been widely different from the doctrine stated to prevail among the followers of the Talmud in the present day.

of the indulgence of that pure love and affection, unconnected with any thoughts of marriage, which now adds so much to the charm of life; of all that delightful familiarity, those tender and kind offices of the sister-in-law to the widower and his orphan children, which are now safe, because marriage between such relations is impossible, but which are not now permitted to any first cousin, unless she has reached an age which puts all considerations of marriage out of the question. Marriage must be determined upon, or these things must cease. And when it is remembered how vast is the disproportion between the number of women and men who do not wish to marry their brothers and sisters-in-law, whether from principle or from want of inclination, and those who do, and that the religious lawfulness of such marriages is (to say the very least) doubtful,—when we remember all this, it does seem the height of cruelty to force this estrangement, for the sake of a few lawless persons, upon the great majority who prize the blessings which they enjoy under the present law. I entreat the House to give effect to these objections —objections entertained upon such strong grounds, and corroborated by all the experience and authority of the Christian Church;—to respect the feelings and wishes of multitudes who ask to be protected in the right to treat the sisters of their wives as their own, and of the women of England, eleven thousand of whom have petitioned the Queen not to assent to this Bill, if it shall unfortunately pass this House, and who now implore you not to violate the purity of domestic religion and the sanctity of our homes.

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